

Notice of Allowability

Application No.

10/731,455

Examiner

Ahmed M. Farah

Applicant(s)

KADZIAUSKAS ET AL.

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on April 18, 2005.
2. ☒ The allowed claim(s) is/are 1-8.
3. ☒ The drawings filed on 08 December 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 4/18/2005
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 6/23/2005.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

A. Farah,
Primary Examiner, UA: 3739
June 23, 2005.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Scott J. Catlin (Reg. No. 52,709) on June 23, 2005.

The application has been amended as follows:

In the claims:

In claim 7, lines 14-15, replace the phrase "an amplitude of the selected pulses" with --a pulse amplitude of the pulsing electrical power--; and

In claim 8, lines 13-14, replace the phrase "an amplitude of the electrical pulses" with --a pulse amplitude of the pulsing electrical power--.

In the Spec:

In line 1 of the abstract, after the word "apparatus" insert -- and method--.

The following is an examiner's statement of reasons for allowance: the prior art of record fails to disclose, teach or suggest apparatus and methods of use for the removal of lens tissue as claimed, comprising: a first and second handpiece including a laser probe and a vibrating needle, respectively; a power source and an input for providing electrical pulses to the needle; and a control unit connected to both the first and second

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handpiece as recited, wherein the electrical pulses provided to the vibrating needle have varying power level to control the temperature of the needle and surrounding tissue as presently claimed.

Prior art:

***Note:** The examiner withdraws from the prior art rejection of Collard et al. (U.S. Pat. No. '677). This withdrawal is has not resulted from, and is not based on, the applicant's response filed on April 18, 2004. However, an in-depth review of Colvard showed that the reference teaches away from the use of a vibrating needle at least in two occasions. In one instance the reference states the process of separating the lens into smaller pieces by a vibrating needle is cumbersome and time consuming, and therefore is not desirable (see col. 1, lines 39-42). In another instance, the reference clearly teaches that the aspiration needle is used to stabilize the eye and prevents movement of the eye during photo-emulsification of the lens tissue (col. 3, lines 1-2). This in turn teaches away from the step of vibration the aspiration needle of Colvard et al. Therefore, the Examiner withdraws from the prior art rejection of Colvard et al.*

US Patent No. 6,193,683 to Ludin et al. teaches an apparatus and method for the phaco-emulsification of lens tissue of an eye, the apparatus comprising a vibrating needle and a control system for providing varying power level to the vibrating needle (controlling the duty cycle of the power delivered to the handpiece) to control the temperature of the handpiece and surrounding tissues. See col. 1, lines 31-63 and claim 2). However, Ludin et al fail to teach a combination of a laser probe and vibrating needle for removing lens tissue as presently claimed.

U.S. Patent 6,629,948 to Rockley et al. and U.S. Patent No. 6,780,165 to Kadzizuskas et al., alternative apparatus and methods of use for phaco-emulsification of lens tissue of an eye, respectively. Their apparatuses comprise irrigation/aspiration needles vibrated by applied electrical pulses, and control system for controlling the duty cycle of the vibrating electrical pulses to control temperature of the needle and surrounding tissue (to ensure heat dissipation before a subsequent pulse) as presently claimed. See claim 1 of ('948) and col. 4, lines 20-28 of both references, respectively.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon-Thur. 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M DVorak can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

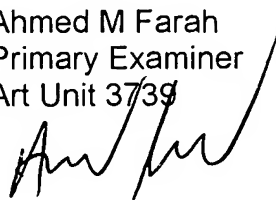
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ahmed M Farah
Primary Examiner
Art Unit 3739

A handwritten signature in black ink, appearing to read 'Ahmed M Farah', is written over the printed name and title.

June 22, 2005.